



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Infotec Development, Inc.

**File:** B-238980

**Date:** July 20, 1990

John P. Carey, Esq., and Gary I. Resnick, Esq., Paul, Hastings, Janofsky & Walker, for the protester.  
Barry S. Landew, for Systems Research and Applications Corp., an interested party.  
Gregory H. Petkoff, Esq., and Bruce E. Francone, Esq., Department of the Air Force, for the agency.  
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### **DIGEST**

1. Where solicitation set forth line, type size, and page limitations on offerors' proposals and warned that pages exceeding these limits would not be evaluated, agency properly rejected 49 pages of protester's proposal which exceeded the limits set. In view of the number of pages involved and the plain requirements of the solicitation, protester's failure to comply with limits did not constitute minor irregularity and, thus, reasonably was not waived or corrected as clarification.

2. Where agency's proper removal of 49 pages from protester's proposal resulted in significant technical deficiencies, agency reasonably concluded that protester's proposal would require major revisions to become acceptable, and eliminated protester from the competitive range without conducting discussions.

### **DECISION**

Infotec Development, Inc. protests its elimination from the competitive range under request for proposals (RFP) F04704-90-R-0004, issued by the Ballistic Systems Division, Norton Air Force Base, California, for designing, developing, implementing, and maintaining information systems software. Infotec contends that it was wrongfully eliminated from the competitive range and should be given the opportunity to participate in discussions.

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We deny the protest.

Among the proposal preparation instructions in the RFP, as amended, was a limitation of 85 pages set for the technical volume, 10 pages each for the management and manpower volumes, no limit on the cost and contract forms volumes, and 2 pages per past contract for the past performance volume. With regard to format, proposals were to be prepared on 8-1/2-by 11-inch paper, with "[a]ll typing (including that on charts, graphs, and tables, etc.) . . . no more than 36 typed lines of text per page" using type no smaller than 10 point character height. Format limitations also were to apply to any clarification requests or deficiency reports. In addition, offerors were advised: "Any proposal pages submitted which exceed the page limitations set forth above will be removed and returned to offeror and will not be evaluated. Those proposal pages failing to meet . . . format [requirements] will not be read or evaluated." [Emphasis in original.]

Prior to submitting its proposal, Infotec requested permission to use eight point character height on its charts, graphs, and tables. Since the request was submitted after the cut-off date for such inquiries, the Air Force did not provide a specific response, but did refer Infotec to the agency's earlier negative response to another offeror which had requested to use a six-point character height minimum for charts, graphs, and tables.

Eight offerors, including Infotec, submitted proposals by the closing date. Upon receipt of the proposals, the Air Force screened each one to ensure compliance with the proposal preparation instructions. Four offerors, including Infotec, had pages removed for exceeding the page and line count limitations. From the technical volume of Infotec's proposal the Air Force removed 32 of 85 allowable pages plus 4 additional pages (a glossary). Five of 10 allowable pages, plus the same glossary were removed from the management volume. The glossary was also removed from the manpower volume.

Infotec's proposal was evaluated without the 49 removed pages and, as a result, 11 significant compliance deficiencies were identified by evaluators. In addition, they identified two other deficiencies for an unsound approach and proposed man-hours. Because of the significant revisions necessary for Infotec to become technically acceptable, the contracting officer determined that Infotec had no reasonable chance for award and eliminated it from the competitive range. After learning of its elimination,

Infotec filed a protest with our Office. The Air Force has not yet awarded the contract.

Infotec explains that it prepared its proposal in good faith without any intent to circumvent the RFP's format requirements, and characterizes its deviations as minor. Infotec argues that its proposal satisfied the apparent policy behind the limits; to ensure the clear presentation of and limit the amount of information. Infotec contends that the Air Force should have waived the deviations or given it an opportunity to correct them as clarifications under the authority of Federal Acquisition Regulation (FAR) § 15.607 (FAC 84-16), since doing so would not prejudice other offerors. Alternatively, Infotec requests that it be permitted to submit a reformatted proposal for evaluation and inclusion in the competitive range.

The Air Force conducted this procurement in accordance with Air Force Regulation (AFR) 70-30, "Streamlined Source Selection Procedures." Paragraph 20 of AFR 70-30 encourages limitations on the number of pages in order to eliminate the submission of data and information not germane to the decision-making process because the excessive size of proposals is costly both to the offeror and unnecessarily time-consuming to the evaluators. Paragraph 20, AFR 70-30 also provides that pages in excess of the set limits are to be removed to ensure they are not evaluated. The procurement also was conducted in accordance with paragraph 20f of Draft Air Force Systems Command Supplement 1 to AFR 70-30 and paragraph 20c of Draft Ballistic Systems Division Supplement 1 to AFR 70-30 which, respectively, provide for limitations on format and for non-evaluation of non-conforming pages. We have reviewed the pages rejected by the Air Force and find that they were properly removed in accordance with the RFP provisions and applicable regulations.

We also find correct the Air Force's assessment that Infotec's deviations were not minor and thus were not waivable or correctable as clarifications. Contrary to Infotec's characterization and its reliance upon FAR § 15.607, its deviations were not minor informalities, irregularities, or apparent clerical mistakes appropriate for waiver or clarification without prejudice to other offerors. Some 32 of 85 allowable pages in the technical volume and 5 of 10 allowable pages in the management volume were rejected for exceeding the line limitation. From our review of these pages, 7 pages had 10 or more excess lines with another 17 pages having 5 or more excess lines. For example, Infotec described its understanding of certain requirements and issues in whole-page tables with some

columns exceeding the 36 line limit by 12 to 15 lines. On 2 other pages, Infotec reproduced the same table, sideways. In addition to the 2 columns of text, each 17 lines long, the table on these pages contained 27 vertical lines and 4 horizontal lines of text.

Notwithstanding its violation of these limits, Infotec argues that its proposal met the policy behind the limits because it clearly presented its information, was not difficult to read, and did not include more information than that on its acceptable pages. In contrast, the Air Force estimates that the total of additional lines from the technical volume alone would equal nearly 8 additional pages. Although Infotec rejects the agency's estimate as "pure speculation," it makes no effort to refute it. Our own review of the record indicates more than 260 excess lines, a number sufficient to comprise more than 7 pages. We thus accept the Air Force estimate. However, even to the extent the additional lines do not contain as much information as might otherwise fit onto a particular page, the fact remains that the Air Force set clear limits on the number of lines and pages. We do not believe the Air Force was required to analyze the proposal on a word-by-word basis to determine whether an offeror had unfairly submitted more information than its competitors.

Infotec accepted the page and line limits of the RFP without protesting.<sup>1/</sup> By choosing to format its proposal as it did, Infotec assumed the risk that its pages would be rejected for noncompliance with the limits. See Kinton, Inc., B-228233 et al., Jan. 28, 1988, 88-1 CPD ¶ 86. In Kinton, the protester's sample videotape was rejected in part because it was not submitted on 1-inch format tape as required by the RFP. The protester contended that it had a 1-inch tape available but did not submit it. We concluded that the burden rested on the protester, as it did on the

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<sup>1/</sup> Infotec did inquire whether it could use eight point type in its charts, tables, and graphs, and though referred to a negative response to a similar question, it proceeded to use eight point type in some of its tables, etc. However, the Air Force reviewer did not apply the 10 point size limit in rejecting Infotec's pages. Thus, to the extent its inquiry approached a protest, Infotec suffered no prejudice. Given these circumstances, we find without merit Infotec's argument, raised in its comments to the agency report, that the Air Force failure to apply these type size limits in some way makes inappropriate or unfair its application of the other limits.

other offerors, to submit a sample which met all specifications. Here, Infotec notes that it used a larger type size than the specified minimum, and that it could "easily" reformat the rejected pages. However, Infotec assumed the responsibility to establish, within the RFP format limits, the suitability and desirability of its proposal and it was by its own choice and business judgment that it used the format it did. We believe that only by demonstrating the merit of its proposal within the established limits would Infotec have been entitled to a further opportunity to expand or correct its proposal through discussions. See Todd Pacific Shipyards Corp., B-214160, Nov. 13, 1984, 84-2 CPD ¶ 519.

Under these circumstances, waiving the deviations or allowing their correction as clarifications would have prejudiced other offerors whose proposals had to meet the same requirements and which had pages removed for violating the limits. Although Infotec relies on a number of cases where waiver or clarification or deviations from the exact letter of the solicitation was allowed, we find those cases are inapposite. They concern matters which did not render the proposals involved technically unacceptable, whereas here Infotec's deviations resulted in substantial deficiencies in its proposal.

In this regard, we agree with the Air Force's determination that Infotec's proposal would require major revisions to correct and, thus, was not included in the competitive range. The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. S. Adelman Assocs., B-234678, July 6, 1989, 89-2 CPD ¶ 19. Further, in reviewing an agency's evaluation, we will not reevaluate the technical proposals, but instead we will examine the agency's evaluation to ensure that the evaluation was reasonable. Id.

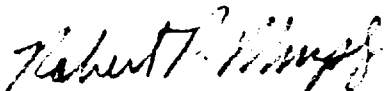
Here, the agency identified significant deficiencies in 11 areas due to the removed pages, and in 2 areas in the remaining portions of the proposal, one of which led the evaluators to rate the proposal as "high risk." While Infotec characterizes the process of reformatting its rejected pages as "easy," we note that it estimated the task, using computers, to take 3 days, a not insubstantial period. In view of the substantial number of pages which

would have to be "reformatted," and the fact that 11 areas of Infotec's proposal would be evaluated for the first time after submission of those pages, we find the agency reasonably concluded that Infotec's proposal would require major revisions and thus was inappropriate for inclusion in the competitive range. See S. Adelman Assocs., B-234678, supra.

The protester also has argued that it submitted a proposal with similar format deviations in response to a predecessor solicitation which was canceled and reissued as the current RFP. Infotec explains that the noncompliant pages were not rejected before and thus should not have been rejected here. However, each procurement is a separate transaction and the action taken on one procurement does not govern the conduct of all similar procurements. Kinton, Inc., B-228233 et al., supra.

In conclusion, while the protester views the agency's action as a matter of "form over substance," and while we believe that format limitations can be subject to abuse and arbitrary application, we do not find that the agency exceeded the bounds of discretion committed to it in concluding that Infotec's proposal violated the format limitations on a substantial number of pages and its resulting technical deficiencies made it inappropriate for inclusion in the competitive range.

Accordingly, the protest is denied.



 James F. Hinchman  
General Counsel